

VOPA ADVISOR

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IN REMEMBRANCE OF SEPTEMBER 11TH

MISSION OF VOPA

Through zealous and effective
advocacy and legal representation to:

- ◇ Protect and advance the legal,
human, and civil rights of persons
with disabilities;
- ◇ Combat and prevent abuse,
neglect and discrimination;
- ◇ Promote independence, choice
and self determination by persons
with disabilities in the
Commonwealth.

MESSAGE FROM THE VOPA BOARD CHAIR

Barbara Barrett

As the newly elected Chair of the Board for Protection and Advocacy, I was asked if I would like to write something for our very first VOPA newsletter. I am honored to be able to do so. As I sat down to "give it a go," I found myself thinking back many years to the very first time I heard someone publicly say, "The protection and advocacy agency needs to be separated from state government control." That was about 25 years ago when I was beginning my personal journey down the road of learning how to be an advocate for my daughter, Lena Rae Fretwell, who was born with mental retardation. (First lesson learned as an advocate: It doesn't happen overnight! Second lesson learned: Persistence, sometimes, does pay off!) Even though it seems like only yesterday, I realize how many years "ticked away" before it actually became a reality on July 16, 2002. It has been a long, hard fought journey for many.

On August 1 and 2, the VOPA Board had its first meeting in Richmond. Our first meeting was an

orientation to the work of the Protection and Advocacy organization on the state and national level. We spent a great deal of time trying to interpret our roles and responsibilities as Board members as we began the work of the Board. The Board is made up of parents, service providers, and other interested and dedicated advocates. The Board members from across the state are:

- Barbara Barrett
(Chair), Crozet
- Maureen Hollowell
(Vice Chair), Virginia Beach
- Martha Bryant,
Amherst
- Ray Burmester,
Fairfax
- Michael Cooper,
Arlington
- Mary Giliberti,
Arlington
- Waja Grimm,
Manassas
- Marion Hawk,
Midlothian
- Susan Kalanges,
Chester
- Okpil Kim, Richmond

The eleventh Board appointment has resigned, so we are waiting for a replacement member to be appointed.

On September 5, the Board met to adopt VOPA's priorities for 2003. The Board and staff worked together to develop and define the focus of the work of the new independent agency. On September 6, we began a strategic planning process that we will work on as our first year together unfolds.

As we adjourned our last meeting, I found myself reflecting on my observations of the meetings thus far. I wondered what I would say if I was asked to describe the new Board. Even though I think the word is overused, the best word that I could think of was, "Awesome!" I was truly awed by the diversity, scope, and magnitude of the advocacy experience and knowledge demonstrated by the Board members. I would like to assure the citizens of the Commonwealth of Virginia, especially the

Continued on page 2

MESSAGE *continued from page 1*

disability community, that they have before them, a group of people sitting on the VOPA Board who have the needed credentials to help fulfill the mission of the Office.

I know everyone in the disability community has the new agency and the Board under a microscope, and they are waiting and watching to see what will transpire. The new Board members and staff acknowledge that the "learning curve" is great for all of us, but it is being tackled together, one day at a time. This is a process that will take some time to evolve, so I hope everyone (Board members, staff, and the disability community) will have patience with one another.

One of the biggest challenges facing the Board is the hiring of the Executive Director. A search committee from the Board will advertise and begin the interviewing process in the next few months. Until an Executive Director is in place, a lot of organizational objectives are momentarily on hold, but the work of the agency continues.

It would be unforgivable not to mention that the staff who sat down with the new Board at our first meeting impressed the Board members with their dedication, knowledge, and expertise. As much as the Board wants to find and hire its Executive Director, the staff are even more eager to have this person in place to help the new agency redefine and restructure itself to effectively protect and represent the rights of persons with disabilities who experience abuse, neglect, or discrimination.

In closing, I would like to take this opportunity to publicly thank the people who agreed to give their time and expertise to serve on the VOPA Board. Together we can make a difference.

VOPA OBTAINS CONSENT DECREE AND PERMANENT INJUNCTION IN DEATH CASE

Paul J. Buckley, Staff Attorney

VOPA received a report that TS, an individual with multiple physical and mental disabilities, had died unexpectedly. The report was sketchy, providing only sufficient information to determine that TS had received services through Central Virginia Community Services, and that she had died at an adult foster care facility somewhere in the vicinity of Lynchburg.

VOPA immediately started requesting records from agencies and providers that were thought to have provided services to TS. Finally, it was determined that TS died while at St. Aaron's, an adult foster care facility operated by Agape Adult Foster Care Services, L.L.C. After receiving no response to numerous requests for records of the care and treatment provided to TS by St. Aaron's, VOPA attorneys filed a complaint in the U.S. District Court for the Western District of Virginia. The complaint was fol-

lowed by a motion for injunctive relief seeking a court order to compel St. Aaron's parent corporation, Agape, to permit VOPA the access to records and staff that is provided for by federal and state law.

Faced with a lawsuit, Agape finally responded and provided some records regarding TS. In order to ensure continued cooperation, VOPA presented Agape with a settlement agreement that consisted of a joint motion for a consent decree and permanent injunction. By the terms of the settlement agreement, Agape agrees to cooperate with VOPA's investigation of TS's death. Agape subsequently entered into the settlement agreement and the joint motion was filed with the Federal District Court.

On August 23, 2002, the Court entered an order approving the consent decree and permanent injunction. The Court retains jurisdiction in the event that enforcement of the injunction becomes necessary.

COMMUNICATION RESTORED

Philip L. Sieck, Disability Rights Advocate

Laura (not her real name) called the Virginia Office for Protection and Advocacy (VOPA) to request assistance with gaining vocational rehabilitation services from the Department of Rehabilitative Services (DRS). She has an expressive learning disability, but graduated from high school just weeks before her call to VOPA for assistance through the Client Assistance Program (CAP). Laura complained that her rehabilitation counselor would not develop an Employment Plan or agree to services.

Communication issues can easily

arise between persons with the need for assistance and the service agency. Sometimes it is in usage of terms, lack of familiarity with processes, gaps in time without updates, or one's perspective. For instance, consent to release information forms were mailed to Laura after several unsuccessful attempts to reach her by telephone. Weeks later, she had still not returned the forms. Finally, in speaking with her, we learned that Laura was in the PERT program at Woodrow Wilson Rehabilitation Center during most of

Continued on page 14

DISCHARGE PLANNING

Michael R. Gray, Staff Attorney

A female resident of a Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) hospital complained to a VOPA attorney that she was ready for discharge, but did not have a written discharge plan. The resident said that her social worker told her she would be discharged without a permanent placement, community supports, or case management services.

Upon investigation, the VOPA attorney learned that two Community Services Boards (CSBs) were disputing their responsibility to serve the resident. Both CSBs claimed that they had no obligation to serve the resident because she did not live in Virginia. Each CSB also argued that, if the resident did live in Virginia, then it was the responsibility of the other CSB to provide her services.

The VOPA attorney appeared in the case and began to gather evidence for an action against one or both CSBs. Within a few days, one of the CSBs agreed to provide services to the resident.

The CSB subsequently developed a comprehensive written discharge plan. The resident was delighted with the plan, and she was recently discharged in accordance with it.

VOPA STOPS PRACTICE OF USING INVALID ASSESSMENTS IN ADMISSION PROCESS FOR CITY'S THERAPEUTIC RECREATION PROGRAM

Deborah F. Barfield, Staff Attorney

VOPA received a complaint from a parent that her city's therapeutic recreation program discriminated against the parent's sixteen-year-old daughter. The summer program is targeted at teenagers who, in the phrasing of the program, are "educable mentally retarded." Teenagers enrolled in the program benefit from opportunities to develop their leisure, educational, and volunteer skills. Admission to the program is based on the applicant's interview performance and his/her performance on a skills assessment. Based on this teenager's performance in the interview and on the assessment, the program's staff determined that the teenager did not satisfy the prerequisites of the program. The parent claimed that this result was discriminatory because the assessment instrument used in the admissions process did not adequately measure adaptive functioning as well as intelligence.

Since the recreation program is a public entity, it is subject to Title II of the ADA, which prohibits exclusion of "qualified" individuals with disabilities when that exclusion is based on the individual's disability. Here, in order to be qualified to participate in this program, a cer-

tain level of functioning is required as noted above. That determination is based on a subjective interview and an objective skills assessment.

Several categories of mental retardation exist – ranging from severe to moderate to mild. (The term "educable" was used by the city program.) Historically, IQ tests, measuring intelligence only, were used to determine one's level of mental retardation. Modern research has displaced this practice. Today's experts agree that a true determination of one's level of mental retardation must include an assessment of adaptive functioning as well as intelligence. In other words, assessment instruments should measure functional as well as intellectual ability. Here, the parent believed the particular assessment instrument used was skewed toward a measurement of intellect only.

If true, the eligibility criteria imposed for admission to the city's therapeutic recreation program would be discriminatory. Title 28 of the Code of Federal Regulations, at section 35.13(b)(3) prohibits a public entity from:

"impose[ing] or apply[ing] eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying the service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered."

VOPA contacted the recreation program to request information on the program's admission procedures and eligibility criteria. The recreation program fully cooperated with VOPA's request. Upon receipt of the materials, VOPA staff set out to determine if the admission criteria and procedure were discriminatory. To facilitate this investigation, VOPA contacted two educational experts – one at Johns Hopkins University and another at the University of Virginia. Both experts agreed that the assessment tool used to determine admission was not a valid measure – either of an individual's adaptive functioning or intelligence. In fact, the experts agreed that the in-

Continued on page 4

INVALID ASSESSMENTS *continued from page 3*

strument lacked any validity as an assessment tool, whatsoever. One expert went so far as to say it was the worst assessment instrument he had ever seen. Most telling was the finding that the instrument's creator had pulled it from the market due to its inferiority. VOPA contacted recreation program staff to explain its findings and to issue a cease and desist request. Program staff, respecting VOPA's findings, quickly complied.

The program staff explained that they had come to use the particular assessment instrument when they found it in a book, purchased at a conference some

years ago. Unfortunately, the program staff had relied on an assessment tool that not only was an inadequate instrument, but also subjected them to liability under federal law.

VOPA cautioned the staff about the risks of relying on commercially available assessment tools. Users of such tools should ensure that these "off-the-shelf" products are accompanied by a guarantee of validity. VOPA recommended that program staff have experts review assessment tools before employing them in any kind of eligibility determination. It is important to note that had the assessment tool been a valid tool, the program staff's determination that the teenager did not meet prerequisites would have been

valid and would not have been discriminatory.

Not only did VOPA advocate for this particular parent in this particular situation, but its efforts also resulted in VOPA raising the program staff's awareness of disability issues and their obligations under the ADA. Thanks to a diligent parent's complaint, VOPA staff's commitment to investigation and advocacy, and the city's willingness to take quick and corrective action, more teens may be able to participate in the city's recreation program in the future.

For more information on the ADA's Title II requirements, see 42 U.S.C. §§ 12115 et. seq., 28 C.F.R. §§ 35.101 et. seq., or visit the U.S. Department of Justice's website at www.usdoj.gov/crt/ada/adahom1.htm.

FIRST ANNUAL INFANT AND TODDLER CONNECTION OF VIRGINIA EARLY INTERVENTION CONFERENCE

Pamela J. Johnson, Staff Attorney

For the past three years, I have been an agency representative to the Early Intervention Inter-agency Management Team (EIIMT). By Virginia Code mandate, the team is comprised of nine state agencies (Department of Mental Health, Mental Retardation and Substance Abuse Services [DMHMRSAS]; Department of Health [VDH]; Department for the Deaf and Hard of Hearing [DDHH]; Department of Education [DOE]; Department of Medical Assistance Services [DMAS]; Department of Social Services [DSS]; Department for the Blind and Vision Impaired [DBVI]; the Bureau of Insurance within the State Corporation Commission [SCC]; and the Virginia Office for Protection and Advocacy [VOPA, formerly DRVD]). The team is responsible for supporting and implementing the early intervention system for

the Commonwealth in conjunction with the Part C Office of the lead agency, the DMHMRSAS.



The Part C Office provides funding to community providers who serve children from birth through age three who have disabilities. These services are designed to

provide parents with the kind of services that may make a difference in the future development of their children and, hopefully, decrease or obviate the need for services once they transition into the Part B system under IDEA.

In April 2002, the early intervention system kicked off a public awareness campaign and the system got a new name, the Infant and Toddler Connection of Virginia (formerly Virginia Babies Can't Wait!). This name change came after a lot of input from parents, providers, and coordinators who all recognized the need to elevate awareness about early intervention services and increase the numbers of families and children served in Virginia. Over the past year, more than 6,000 children have received local early intervention services. We know that

Continued on page 5

CONFERENCE *continued from page 4*

children who receive these services achieve much more than those who do not, and; therefore, we all need to do what we can to make sure these services continue.

Now that you have a little background on the early intervention system in Virginia, I am pleased to announce that the DMHMRSAS, in cooperation with the Partnership for People with Disabilities (formerly VIDD), is sponsoring a conference to educate parents, educators, providers, and service coordinators about Virginia's system. The conference theme is, *"Creating Connections: Celebrating Early Intervention in Virginia."* The conference is being held on November 19 and 20, 2002, at the Doubletree Hotel in Charlottesville,

Virginia. Keynote speakers will be Dr. M'Lisa Sheldon, Director of the Family, Infant and Preschool Program (FIPP) at Western Carolina Center in Morganton, NC; Dathan Rush, MA, CCC-SLP, Senior Coordinator at the FIPP at Western Carolina Center; and Jan Moss, a parent of two children with developmental disabilities. Ms. Moss is also the Director of Community Leadership and Advocacy for the Oklahoma University Center for Excellence in Developmental Disabilities. She is a prolific writer and is committed to helping families self advocate.

The registration cost is \$25/person or \$100 for a team of four persons. If you are interested in attending, please contact Cori Hill at 804-828-7049 or cfill@vcu.edu.

This conference will be a wonderful opportunity for those who are

interested in learning more about early intervention and hear the successes that are being achieved each day in the lives of very special children. I have learned a great deal about the early intervention system and am extremely impressed with all of the hard work that our state and private providers and parents do each day to keep this system going.

If you would like additional information about the Infant and Toddler Connection of Virginia or help support its efforts, you can access this information through the DMHMRSAS's website, www.dmhmrzas.state.va.us. Anne Lucas is the Part C Coordinator, and she can be contacted via the Department's main number, (804) 786-3921.

I hope to see you at the conference!

SIGN LANGUAGE USED HERE!

Kristin B. Cooper, Staff Attorney



Darlene Swindell makes the Virginia Beach office of VOPA a welcome place for the deaf and hard of hearing because she is a state-screened interpreter who is able to interpret for clients at the office and for other VOPA clients as well.

In addition to signing for clients in the Virginia Beach office, Darlene has also accompanied attorneys from that office to pris-

ons, the Department of Rehabilitative Services, and other offices in order to provide client services. Thanks to Darlene, VOPA has an interpreter on its staff and is able to supply interpreter services without delay.

Darlene is passionate about her interpreting, and has a thirty-two year old son named Danny who is deaf.

"I used to live in Ohio with Danny." I remember a time when the schools wouldn't even allow a deaf child to learn sign language. Sign language instruction was available only to hearing children. Deaf children were left out. In order to be in a total communication program, deaf children were forced to attend state residential schools. I got involved with a parent group,

held petition drives, contacted other parent groups in Ohio, and the next year, they permitted sign language for deaf children in public schools in Ohio. That was back in the late '70's. Similar movements improved conditions for the deaf in other states," says Darlene.

Darlene was previously an interpreter for Virginia Beach City Schools, Tidewater Community College, and the United States Navy. Darlene also previously worked as a substance abuse counselor in Ohio. She was also a grant manager for an interpreter training program at Tidewater Community College.

In addition to signing for VOPA, Darlene serves as the Administrative Assistant at the Virginia Beach office of VOPA.

**LETTER OF APPRECIATION
for Faye Adams, Disability
Rights Advocate**

September 11, 2002

Program Manager
Department For Rights Of
Virginians with Disabilities
Commonwealth of Virginia

Dear Sir or Madam: I am writing you a correspondence that is long overdue. It is my intention to express to you the wonderful quality of service I received from your agency. It was through the intervention and dedication of F. Faye Adams that I was able to resolve some troubling issues regarding services from my local DRS office.

Ms. Adams advocated for me in such a way that ensured me that a positive solution was possible and she stayed the course until all my concerns were resolved. I would especially like to note Ms. Adams ability to treat me as a human being, she never passed judgement. At no time did I feel embarrassed or ashamed working with her. She instilled in me a sense of genuine concern and handled my case very professionally.

I cannot say enough to express the gratitude and thanks I have to you, your agency and Ms. Adams. God Bless all of you for the great services that you do.

Sincerely,
David Murray

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**VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY
FY 2003 PROGRAM PRIORITIES
Effective October 1, 2002 through September 30, 2003**

**Developmental Disabilities
(DD) Program**

Federal Eligibility Criteria.

In order to be eligible for services under the DD Program, an individual must have a developmental disability. A developmental disability is a severe, chronic disability that: (a) is attributable to a mental or physical impairment or combination of mental and physical impairments; (b) is manifested before age 22; (c) is likely to continue indefinitely; (d) reflects the person's need for a combination and sequence of special care, treatment, and services that are life long or of extended duration and are individually planned and coordinated; and (e) which result in substantial limitations in three or more of the following major life activities: self-care; receptive and expressive language; learning; mobility; self-direction; independent living; and/or economic self-sufficiency.

Services under the DD Program are provided within case selection and litigation criteria, including available staff and financial resources. Priorities are not ranked in order of importance.

Priority 1: Abuse and Neglect in State-Operated Training Centers and Community-Based Facilities.

To protect the right of persons with developmental disabilities residing in and/or receiving services from DMHMRSAS-operated training centers and community-based facilities, providers and/or programs to be free from abuse and neglect by representing the

interests of individuals who are at imminent risk of or who have been subjected to severe injury, including death, due to abuse and/or neglect. Facilities, programs, and providers include, but are not limited to: training centers, hospitals, licensed assisted living facilities, group homes, intermediate care facilities for persons with mental retardation (ICFMRs), nursing homes, schools, or other facilities providing care and treatment.

GOAL 1: To protect the legal rights of and represent the interests of individuals who are subjected to abuse or neglect as defined in the Priority.

GOAL 2: To conduct outreach to residents of selected community-based facilities to increase their knowledge of their rights to be free from abuse and neglect and receive services in a safe environment.

Priority 2: Deaths and Critical Incidents in State-Operated Training Centers and Community-Based Facilities

To monitor the performance of the DMHMRSAS human rights system through ongoing review and analysis of reports on critical incidents and deaths at the training centers and to effect systemic reform, as appropriate, through legal avenues and other activities. To evaluate extending the critical incident notification system to community-based facilities.

GOAL 1: To ensure that incidents of abuse and neglect are properly reported and investigated and that facilities take appropriate remedial action in instances of abuse or neglect.

Continued on page 7

PRIORITIES *continued from page 6*

GOAL 2: To improve the safety of DMHMRSAS facility residents by determining whether there are patterns or trends contributing to a disproportionate number of critical incidents at DMHMRSAS-operated training centers.

GOAL 3: To improve the safety of residents of community-based facilities by beginning to assess extension of the critical incident notification system to community-based facilities through future legislative action.

Priority 3: Community-Based Services in the Most Integrated Setting

To represent the interests of (1) persons in DMHMRSAS training centers deemed ready for discharge by their treatment team and who otherwise meet the criteria of the U.S. Supreme Court decision in Olmstead v. L.C.; and (2) persons residing in the community to receive appropriate services and supports in the most integrated setting. To research and analyze how to best provide advocacy and legal representation to individuals inappropriately placed in ICFMRs, nursing homes, or other non-state operated facilities.

GOAL 1: To provide advocacy and/or legal representation services to individuals with developmental disabilities deemed ready for discharge from a DMHMRSAS training center by their treatment team, and who otherwise meet the criteria established by the U.S. Supreme Court decision in Olmstead v. L.C., in support of discharge to the community with appropriate services and supports.

GOAL 2: To provide advocacy and/or legal representation services to individuals with develop-

mental disabilities residing in the community, but at risk of institutionalization, in support of access to appropriate services in the most integrated setting.

GOAL 3: To determine, through research and analysis, how to best provide advocacy and legal representation to persons inappropriately placed in ICFMRs, nursing homes, or other non-state operated facilities in support of developing meaningful choice.

GOAL 4: To participate in and contribute legal expertise and consultation to the state Olmstead Task Force for the purpose of facilitating the creation of an appropriate and comprehensive "Olmstead Plan" to ensure that persons with developmental disabilities receive appropriate supports and services in the most integrated setting.

Priority 4: Virginia Department of Education Special Education Complaint Review Procedure

To effect systemic change to the Virginia Department of Education's implementation of the special education Complaint Review Procedure to ensure that complaints are properly investigated.

GOAL: To ensure, through administrative or judicial proceedings, if necessary, that the Virginia Department of Education adopts and implements practices and procedures that will assure that special education complaints are properly investigated.

Priority 5: Special Education Advocacy and Legal Representation

To provide targeted advocacy and legal representation services to students who require and have

been denied (1) transition services, (2) eligibility for special education services, and/or (3) the related services of speech/language therapy; occupational therapy, physical therapy, and/or behavioral/mental health services.

GOAL 1: To protect the legal rights of and represent the interests of students with developmental disabilities, ages 14 and older, who require and have been denied appropriate transition services.

GOAL 2: To protect the legal rights of and represent the interests of students with developmental disabilities who are entitled to and have been denied eligibility for special education services.

GOAL 3: To protect the legal rights of and represent the interests of students with developmental disabilities who require and have been denied the related services of (1) speech and language therapy; (2) occupational therapy; (3) physical therapy, and/or behavioral/mental health services.

Priority 6: Training and Resource Development

To assist consumers, family members, and advocates in obtaining the resources and skills to advocate for themselves or their family member with a developmental disability.

GOAL: To provide resource materials and training opportunities to consumers and families of persons with developmental disabilities.

Continued on page 8

PRIORITIES continued from page 7

Protection and Advocacy for Individuals with Mental Illness (PAIMI) Program

Federal Eligibility Criteria. In order to be eligible for services under the PAIMI Program, an individual must have a mental illness and be receiving services in a hospital or other facility providing care and treatment for their illness. People who have problems while being taken to or from a facility, getting admitted to a facility, or within 90 days of leaving a facility may also be eligible for PAIMI services. Depending on federal funding levels, persons with mental illness who live in the community independently or with family or friends may also be eligible.

Services under the PAIMI Program are provided within case selection and litigation criteria, including available staff and financial resources. Priorities are not ranked in order of importance.

Priority 1: Abuse and Neglect in State-Operated and Community-Based Facilities

To protect the right of persons with mental illness residing in and/or receiving services from state-operated and community-based facilities, providers, and/or programs providing care and treatment to be free from abuse and neglect, including death, by representing the interests of individuals who are at imminent risk of or who have been subjected to severe injury due to abuse and/or neglect. Facilities, programs, and providers include, but are not limited to, hospitals, licensed assisted living facilities, group homes, nursing homes, schools, or other places providing care and treatment.

GOAL 1: To represent the interests of individuals who are subjected to abuse or neglect as defined in the Priority.

GOAL 2: To increase the awareness of facility residents, their families, and facility staff of VOPA services and legal rights through outreach, technical assistance, and training activities.

Priority 2: Community-Based Services in the Most Integrated Setting

To protect the rights of (1) persons in state-operated mental health facilities deemed ready for discharge by their treatment team and who otherwise meet the criteria of the U.S. Supreme Court decision in Olmstead v. L.C.; and (2) persons who have been discharged from facilities to receive appropriate services and supports in the most integrated setting.

GOAL 1: To ensure that adults and juveniles ready for discharge from public or private residential facilities are discharged to the community with appropriate services and supports.

GOAL 2: To ensure that adults and juveniles who have been discharged from an in-patient psychiatric setting to the community, who are at risk of reinstitutionalization, have access to appropriate services and supports in the most integrated setting.

GOAL 3: To participate in and contribute legal expertise and consultation to the state Olmstead Task Force for the purpose of facilitating the creation of an appropriate and comprehensive "Olmstead Plan" to ensure that persons with mental illness receive appropriate supports and services in the most integrated setting.

Priority 3: Deaths and Critical Incidents in State Mental Health Facilities and Community-Based Facilities

To monitor the performance of the DMHMRSAS human rights system through ongoing review and analysis of reports on critical incidents and deaths at facilities and to effect systemic reform, as appropriate, through legal avenues and other activities. To evaluate extending the critical incident notification system to community-based facilities.

GOAL 1: To ensure that incidents of abuse and neglect are properly reported and investigated and that facilities take appropriate remedial action in instances of abuse or neglect.

GOAL 2: To improve the safety of DMHMRSAS facility residents by determining whether there are patterns or trends contributing to a disproportionate number of critical incidents at DMHMRSAS-operated mental health facilities.

GOAL 3: To improve the safety of residents of community-based facilities by beginning to assess extension of the critical incident notification system to community-based facilities through future legislative action.

Priority 4: Informed Consent to Treatment

To protect the legal rights of individuals who have been treated in the absence of or contrary to informed personal consent or consent by a properly authorized substitute decision-maker.

GOAL: To represent the interests of persons who have been treated in the absence of or contrary to

Continued on page 9

PRIORITIES *continued from page 8*

informed personal consent or that of a properly authorized substitute decision-maker.

Priority 5: Special Education Advocacy and Legal Representation

To provide targeted advocacy and legal representation services to up to five (5) students with mental illness (including an educational classification of severe emotional disturbance) who are receiving special education services and supports in an inappropriate placement, in violation of the Individuals with Disabilities Education Act (IDEA).

GOAL: To protect the legal rights of and represent the interests of students with mental illness who are receiving special education services and supports in an inappropriate placement.

Protection and Advocacy of Individual Rights (PAIR)/ Virginians with Disabilities Act (VDA) Programs

PAIR Federal Eligibility Criteria. In order to be eligible for services under the PAIR Program, an individual with a disability cannot be eligible for services under the Developmental Disabilities (DD) Program or the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Program. In addition, the individual cannot be receiving services under the Client Assistance Program.

VDA Eligibility Criteria. To be eligible for services under the VDA Program, the individual must be a person with a disability who has experienced abuse, neglect, or discrimination that violates the Virginians with Disabilities Act. Persons who are eligible for services under the DD or PAIMI Programs who cannot be served under PAIR,

may be eligible for services under the VDA Program within that Program's limited resources.

Services under the PAIR and VDA Programs are provided within case selection and litigation criteria, including available staff and financial resources. Priorities are not ranked in order of importance.

Priority 1: ADA Title III Accessibility

To provide advocacy and legal representation to persons with disabilities who have been denied access to public accommodations in violation of Title III of the Americans with Disabilities Act (ADA).

GOAL 1: To protect the legal rights and represent the interests of individuals who are being denied access to places of public accommodation by private sector entities, in violation of Title III of the Americans with Disabilities Act.

GOAL 2: To protect the legal rights of and represent the interests of PAIR-eligible children who have been denied physical or program access to a day care facility.

GOAL 3: To protect the legal rights and represent the interests of VDA-eligible children who have been denied physical or program access to a day care facility.

GOAL 4: To protect the legal rights of and represent the interests of persons with sensory disabilities who have been denied effective communication access or appropriate auxiliary aids and services.

Priority 2: ADA Title II Accessibility

To provide advocacy and legal representation to individuals with disabilities who have been denied pro-

gram, communication, or physical access to state and/or local government buildings, facilities, programs, or services in violation of Title II of the Americans with Disabilities Act (ADA).

GOAL 1: To protect the legal rights of and provide representation to persons with disabilities who have been denied program, communication, or physical access to state and/or local government buildings, programs, or facilities.

GOAL 2: In compliance with the holding and principles of Olmstead v. L.C., to ensure that people are provided with services in the most integrated and least restrictive environment appropriate to their needs.

GOAL 3: To increase the accessibility of voter polling places for persons with disabilities.

GOAL 4: To protect the legal rights and represent the interests of individuals who are being denied access to public transportation and/or para-transit services either because of (1) physical accessibility issues, (2) inappropriate denial of eligibility for services, or (3) para-transit scheduling/availability issues.

GOAL 5: To protect, through the provision of short-term assistance, the legal rights of inmates in jails or prisons who have been denied access to appropriate medical care and/or programs due to their disability.

Priority 3: Special Education Advocacy and Legal Representation

To provide advocacy and legal representation services to PAIR

Continued on page 10

PRIORITIES continued from page 9

eligible students with disabilities who require but have been inappropriately denied (1) eligibility for special education services under the Individuals with Disabilities Education Act (IDEA); or (2) development of a 504 Plan under the Rehabilitation Act of 1973, as amended.

GOAL 1: To protect the legal rights of and represent the interests of PAIR-eligible students with disabilities who require but have been inappropriately denied eligibility for special education services under IDEA.

GOAL 2: To protect the legal rights of and represent the interests of PAIR-eligible students with disabilities who require but have been denied a 504 Plan to which they are entitled under the Rehabilitation Act of 1973, as amended.

Priority 4: Training and Resource Development

To assist consumers, family members, advocates, and other organizations obtain the resources and skills necessary to advocate for themselves or their family member with a disability and to educate businesses, agencies, and other entities regarding their responsibilities and obligations under civil rights and non-discrimination statutes such as the Americans with Disabilities Act.

GOAL: To provide resource materials and training opportunities to individuals seeking information on legal rights or responsibilities and/or strategies regarding compliance with non-discrimination and civil rights statutes.

Assistive Technology (AT) Program

AT Program Eligibility Criteria. Any individual with a disability who requires and has been inappropriately denied an assistive device or service may be eligible for services under the AT Program if their issue meets case selection criteria. The primary focus of the AT Program is on obtaining funding for AT from vocational rehabilitation, special education, Medicaid, or Medicare funding sources.

Individual priorities are not required to be established under the AT Program. However due to limited funding, goals are set for this Program and representation is based on case selection and litigation criteria, including staff and financial resources.

Overall Priority: Access to Assistive Technology Devices and Services

To protect the legal rights of individuals with disabilities who have been improperly denied access to or funding for assistive technology devices or services.

GOAL 1: To provide information and referral, technical assistance, advocacy, and legal representation services to persons with disabilities who have been inappropriately denied access to assistive technology devices or services to which they are entitled.

GOAL 2: To reduce barriers to obtaining AT and to assist consumers, family members, advocates, and other organizations to develop the resources and skills necessary to advocate for themselves or their family member through training, resource development, and systems change activities, including inter-agency collaboration.

Protection and Advocacy for Beneficiaries of Social Security (PABSS) Program

(Priorities are Effective December 1, 2002)

PABSS Eligibility Criteria.

Under this program, VOPA can provide assistance and representation to individuals with disabilities who are beneficiaries of Supplemental Security Income (SSI) and/or Social Security Disability Income (SSDI) and who are seeking vocational rehabilitation services, employment services, and other support services from employment networks and other service providers.

Priority 1: Information, Referral and Technical Assistance

To assist SSI/SSDI beneficiaries to obtain information, resources, and self-advocacy skills and to provide information/referral regarding their rights as SSI/SSDI beneficiaries, rights under the VR and Ticket Programs and under the Americans with Disabilities Act.

Priority 2: Collaborative Development of Ticket to Work System in Virginia

To work collaboratively with the agencies and organizations responsible for developing and implementing Ticket to Work in Virginia to create an effective system and to identify and remediate current or potential systemic deficiencies which may impair the ability of SSI/SSDI beneficiaries to obtain, retain, or regain employment under the Ticket to Work Program.

Priority 3: Employment Discrimination and Denial of 1619B Medicaid Status for SSI/SSDI Beneficiaries

To protect the legal rights of and represent the interests of SSI/

Continued on page 11

PRIORITIES *continued from page 10*

SSDI beneficiaries: (1) who have disputes with a Benefits Planning Assistance and Outreach (BPAO) entity or an Employment Network (EN); (2) who are at risk of or who have lost a job as result of a denial or delay in resolving 1619b eligibility status; or (3) who allege employment discrimination resulting in denial of employment or job loss, in violation of the Americans with Disabilities Act (ADA) or Section 504 of the Rehabilitation Act of 1973, as amended. Subject to available resources, all meritorious cases will be taken under (1) and (2) and up to 5 meritorious cases will be taken under (3).

**Client Assistance (CAP)
Program**

The CAP Program provides information, referral, technical assistance, advocacy, and/or legal representation to persons who are applicants for or clients of the Department of Rehabilitation Services (DRS), the Department for the Blind and Vision Impaired (DBVI), Centers for Independent Living (CILs), and other programs funded under the Rehabilitation Act of 1973, as amended. Per federal requirements, the CAP Program does not set annual program priorities. All individuals whose issue has legal merit are provided CAP services free of charge within available Program resources. The CAP Program also works to reduce policy and practice barriers related to the receipt of appropriate vocational rehabilitation and independent living services by programs funded under the federal Rehabilitation Act.

TRANSITION SERVICES

Hilary E. Malawer, Staff Attorney

Alex's right to appropriate transition services was being violated by his school. Ms. H., Alex's mom, contacted VOPA expressing concerns about this situation. Alex is a 16-year-old with cerebral palsy and mental retardation. His passion is for computers. The Virginia Special Education Regulations state that: "Transition services shall be based on the individual student's needs, taking into account the student's preferences and interests." (8 VAC 20-80-62 F10) Alex had filled out school surveys stating that his vocational interest was in the computer field. However, Alex's transition placements were repeatedly in other areas, areas involving manual labor.

Ms. H. researched computer internships and found an exciting, innovative program that would allow Alex to attain expertise with numerous types of hardware and software applications. The internship was free and located 15 minutes from the school. The school stated that it would not provide transportation to the internship. Alex's parents had no way to provide the necessary transportation. Without school transportation, Alex would not be able to participate in the internship.

VOPA worked with the Individualized Education Program (IEP) team, explaining the above-referenced transition services law. The internship was incorporated into the IEP. VOPA further informed the school of the Virginia Special Education Regulation provision addressing transportation: "Each child with a disability placed in an education program, including private special education day or residential placements, by the school division, will be entitled to transportation to and from such program at no cost if such transportation is necessary to enable such child to benefit from educational programs and opportunities." (8 VAC 20-80-60 F1) VOPA ensured that the school understood that if Alex were not provided transportation to his internship, they would be in clear violation of the law.

Due to VOPA's intervention, Alex is now successfully participating in the internship, with transportation being provided by the school. His mom expressed her appreciation to the staff attorney involved, stating in a fax, "You are a Godsend. Alex's face just lights up when he walks into that room filled with computers. I can't thank you enough."



COMMONWEALTH CONVENES OLMSTEAD PLAN TASK FORCE

Jonathan G. Martinis, Managing Attorney

On July 31, 2002, the Commonwealth of Virginia convened the first meeting of its Olmstead Plan Task Force, the group charged with developing a plan for providing community integration and services for persons with disabilities who either live in or are at risk of living in institutions. The Olmstead Task Force, named after the Supreme Court's decision, Olmstead v. L.C., that established the right of persons with disabilities to live in community-based settings, is composed of 65 persons selected from a cross-section of disability rights and awareness groups, advocates, and state agency representatives.

At the first meeting, the Task Force was divided into several "issue teams" charged with developing separate portions of the final plan. The teams will meet separately, analyzing barriers to community integration and proposing solutions to them, then report their findings to the full Task Force. The Task Force is charged with developing a final plan by August 2003.

VOPA is well represented on the Task Force. Jonathan Martinis sits on the 16-member steering committee, charged with ensuring that the Task Force and issues teams remain on track and with organizing topics for discussion at future Task Force meetings. He also serves as the state agency "facilitator" for two issues teams – accountability and qualified providers.

The Task Force's job is not an easy one, but its mandate is set forth in the Americans with Disabilities Act and by the Supreme Court: "Unjustified institutional isolation is discrimination." It is for the Task Force to develop a plan eliminating this discrimination and ensuring that persons who are capable of living and thriving in the community are empowered to do so.

VOPA HELPS STUDENTS RECEIVE APPROPRIATE ASSISTIVE TECHNOLOGY DEVICES

William C. Tucker, Staff Attorney

Brian is an eighth grade student at a Northern Virginia middle school where he receives special education services. His parents became very concerned when his evaluations showed that he was falling behind in several of his classes. One of their concerns was that Brian was not being provided with appropriate assistive technology devices to aid in his studies and class work. Brian had received an assistive technology evaluation from the school district that provided for one augmentative communication device. Brian's parents believed this device was inappropriate for him because Brian returned it to the school after it remained in his locker unused for several months.

Brian's parents initiated a due process hearing, which is an adversarial proceeding against the school that can be costly and time consuming, in order to resolve their concerns. They then requested that VOPA serve as Brian's counsel. The case was accepted under the Assistive Technology (AT) Program, but the staff attorney assigned to his case advised Brian's parents that his case was not ready for due process because they did not have an evaluation that refuted the school's assistive technology evaluation. Instead, he informed the parents that the Individuals with Disabilities Education Act (IDEA) entitled Brian to an Independent Educational Evaluation (IEE) at the school's expense, and suggested that they request an IEE from the school. On behalf of Brian, the attorney made the request, and the school provided an evaluation performed by an independent expert in assistive technology. The evaluator discovered that Brian enjoyed working on a desktop computer, and suggested numerous software programs that he could use to assist him with his writing assignments and other class work. Following the evaluation, the VOPA attorney requested an IEP meeting with the school, in which his parents received all of the software that they requested, a computer in everyone one of Brian's classrooms, and training for Brian and his instructors regarding using all of the software programs.

Under the IDEA, school districts are required to provide assistive technology that is tailored to a special education student's unique needs. Modern technology can help special education students communicate, organize, process, and present information in a meaningful way. Unfortunately, students are not always provided assistive technology devices that are appropriate to the student's needs because of the cost associated with conducting a proper evaluation and obtaining the appropriate device. Instead, a school district may provide the same device to most or all of its special education students.

So what should a parent do when their child is not receiving the appropriate assistive technology device? Brian's case illustrates several important points that a parent of a student receive-

Continued on page 13

ASSISTIVE TECHNOLOGY *continued from page 12*

ing special education services should remember when advocating that a school district provide appropriate assistive technology. First, do not immediately take the most adversarial posture, which in the context of the IDEA is a due process hearing. Brian's parents were able to achieve the result they wanted without a due process hearing, and would not have achieved this result through a due process hearing. Requesting the IEE allowed the parents and school to cooperate and work together toward a common goal. Second, remember that you are negotiating, not arguing. You are attempting to achieve a result, so you should focus your discussion toward why the device you have requested is appropriate, and not toward how the school has failed the student. Finally, do not be afraid to ask for help. Often it is more important for a parent to know where to find assistance, rather than to try to achieve a complete understanding of the law. VOPA's AT Program provides a variety of services, including technical assistance in self advocacy, negotiation, and legal representation. As Brian's case shows, had his parents not requested VOPA's assistance, he might not have received the assistive technology that he needed.

For more information regarding the AT Program, contact the Consumer Services Division, toll-free at 800-552-3962 (voice/TTY).

TECHNICAL ASSISTANCE AND SHORT-TERM ASSISTANCE

Philip J. Markert, Staff Attorney

One of the goals of all P&As (protection and advocacy organizations such as VOPA) is to assist parents and people with disabilities to be able to advocate for themselves. The most visible way we accomplish this goal is through traditional methods such as presentation, distribution of materials, and the assistance provided by our Consumer Services Division.

Of course, sometimes it is necessary for us to directly immerse ourselves in a particular situation. One of the frustrating aspects of our advocacy and litigation efforts is that after the battle is over (and we have moved on to another case), the client is still required to maintain an effective relationship with the former adversary.

Fortunately, P&As are also able to provide services to clients that are more focused than training or information and referral, but less intrusive than advocacy and litigation. This in-between level of service helps us maximize our staff resources, but also enables us to empower our clients to advocate for themselves. At VOPA, we call these services, Technical Assistance (TA) and Short-Term Assistance (STA). Advocate and/or staff attorneys provides these services after case screening by a managing attorney.

Most TA cases involve a review of the information collected during the telephone intake, perhaps some limited research and a single telephone call to the client. One goal of the call is to provide the client with answers to the specific factual or legal questions raised during the intake. The other goal is to provide the client with practical suggestions on how to assertively use that knowledge in a manner that will solve their immediate problem while keeping communication lines open for the future.

In contrast, STA cases are often more complicated. The process will start the same as a TA, but may involve more extensive information gathering and legal research. It will often include document reviews, phone calls to other parties, and frequently multiple conversations with the client. Unfortunately, intervention by an advocate/attorney can sometimes result in the creation of an adversarial relationship which lingers long after the advocate/attorney has moved on to the next client. However, during an STA case, VOPA will not get in the middle of the client's dispute. Instead, the advocate/attorney provides coaching and serves as a resource person to empower clients to be able to advocate and negotiate on their own. After the case is closed, relationships have hopefully been preserved and the client has gained information and experience that will be used during the next inevitable crisis.

Recently, a client of a VOPA attorney illustrated how powerful STA can be. The client was a two-year-old boy (let's call him John) with autism. After doing some initial research, the attorney spoke with John's mom and learned that John had been receiving services from the local early intervention system for

Continued on page 14

TA AND STA *continued from page 13*

about two years, and he was approaching his third birthday in September. His parents were attempting to get him started in the special education program offered by their school district but were told that it was “state policy” that the district could not do anything until he actually turned three years old. This was devastating to the parents. John’s birthday was in late September; they knew that there was an age window in which education for children with autism is most fruitful.

The attorney’s suspicion was that the district was incorrect; their interpretation of the general rule may have been reasonable, but their understanding was incomplete with regard to exceptions to the rules. However, the attorney was also aware that the parents

might have another 12 years in which they would have to work with their district and at least four with the first school. It appeared that it might be counter-productive to intervene and risk their future relationship.

The attorney then did some more research and spoke to other advocates with more specialized experience in early intervention. During the next phone call, the attorney advised the parents that John was indeed eligible to start the special education eligibility determination process, and they did not have to wait until he actually turned three. They discussed strategies for approaching the district, especially the need for preparation for all meetings. They talked about the funds that might be needed to ensure that thorough evaluations were conducted and one of the professionals who had previously worked with John attended the meetings.

They were referred to material such as the U.S. Surgeon General’s report that discusses effective techniques and the importance of intensive services for children with autism. Finally, they were encouraged to consult two excellent web-based resources on special education – IdeaPractices.org and WrightsLaw.com. The first is sponsored by the government and has excellent legal and factual material. The latter has comprehensive information on using and understanding evaluations, and practical strategies for working with school districts.

The parents confirmed that they were successful in their efforts. Services were identified well before school started and were being provided as soon as school started. They obtained excellent services. Perhaps, best of all, they reported no apparent rancor or ill will from the district and anticipated a fruitful future relationship.

COMMUNICATIONS *continued from page 2*

this period. She had vocational, independent living and other assessments during the six-week PERT program. She also was receiving speech-language services, through DRS, in the community. Laura was receiving services. She was in the evaluation phase of her vocational rehabilitation program that is routinely provided to increase information upon which the Employment Plan is developed.

Laura met with her DRS counselor a few weeks after PERT. Her interests were child care, horticulture, and veterinarian assistant. She lacked previous employment experience and welcomed the counselor’s offer of situational assessments in her areas of interest.

Although she had no specific

plans, Laura wanted to work and go to college. Two weeks after the post-PERT meeting with her counselor, Laura met with her VOPA advocate. She was pleased to report that she had found a job, on her own, working in food service for about 24 hours a week. Her desire to attend college was ambitious because of her learning disabilities, which contributed to low academic achievement scores. She needed tutoring in order to reach a level where she could participate in developmental studies at a community college. She was referred to community resources for assistance in identifying a tutor.

A few months later, Laura called her VOPA advocate and complained that the counselor still had not scheduled any of the trial work situations that Laura had requested. The advocate called the counselor to inquire about the

reasons for delay. The counselor related that a message received from Laura right after she started her job months indicated that she was happy with her job and had also started receiving academic assistance from a tutor. From the counselor’s perspective, all appeared well and resolved. Thus, because Laura had not told the counselor then or since that she still wanted the situational assessments, the counselor had assumed Laura was satisfied. The VOPA advocate suggested a meeting to re-establish communications. The advocate successfully facilitated the meeting and prepared a written summary of expected outcomes, which have been implemented with out further problems.

After her brief experiences with several types of work, Laura decided to focus on obtaining work

Continued on page 15

as a veterinarian assistant, aiming for a job in the field coupled with part-time study. With the assistance of a volunteer tutor, her family, and speech-language services and her own steady work, she improved in the language and reading areas. She then advanced to participating in developmental studies at the community college in one academic area.



She passed the initial testing and proceeded to the next area of developmental studies. She resigned from her food service job and, with the assistance of the

Center for Independent Living's supported employment services, has begun the type of work she had hoped for in a veterinary clinic. She plans to continue these two activities until next summer when she will enroll in the veterinarian assistant program at a community college.



State Plan Public Hearing Schedule for Fall, 2002 On Vocational Rehabilitation and Supported Employment Sponsored by The Virginia Department of Rehabilitative Services

The Virginia Department of Rehabilitative Services will hold several public forums to seek your input regarding vocational rehabilitation and supported employment services provided to Virginians with disabilities. You can review the State Plan at www.vadrs.org, the Department of Rehabilitative Services sponsored Web site, or at www.va-src.org, the Web site sponsored by the State Rehabilitation Council. Please join us.

2002 Schedule		
City/Town	Location	Date/Time
Fairfax	DRS Fairfax Office 11150 Main St., Suite 300	November 7 4-6 p.m.
Portsmouth	DRS Tidewater Regional Office 5700 Thurston Ave., Suite 107	November 14 4-6 p.m.
Fishersville	William Cashett Chapel Woodrow Wilson Rehabilitation Center State Route 250	November 18 4-6 p.m.

Other Opportunities for State Plan Public Comment

Comments on the State Plan may be made throughout the year. Letters may be sent to Elizabeth E. Smith, Director of Policy and Planning, Virginia Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia 23229. You may also provide your comments by telephone to Rhonda Earman at 804.662.7611, toll free at 800.552.5019, TTY at 804.662.9040, by fax at 804.662.7456 or by e-mail at srcweb@dsa.state.va.us.

*Virginia Department for the Blind and Vision Impaired
Richmond, Virginia*

ANNOUNCEMENT OF PUBLIC MEETINGS

The Department for the Blind and Vision Impaired (DBVI) has arranged for six public meetings around the state to solicit comments from the public regarding vocational rehabilitation and other agency services. Individuals requiring interpreters, assistive listening devices or other special accommodations should contact James G. Taylor, Vocational Rehabilitation (VR) Program Director, at 1-800-622-2155 (Voice/TTY) at least two weeks prior to the meeting to request the preferred accommodation. The meeting locations, dates and times follow:

ROANOKE

Lions Sight Foundation
501 Elm Avenue SW
October 7, 2002
7:00 p.m. - 8:00 p.m.

BRISTOL

Department for the Blind and Vision Impaired
111 Commonwealth Avenue
October 23, 2002
1:00 p.m. - 2:00 p.m.

FREDERICKSBURG

Ramada Inn - South
5324 Jefferson Davis Highway
November 1, 2002
4:30 p.m. - 5:30 p.m.

RICHMOND

Virginia Rehabilitation for the Blind
and Vision Impaired
401 Azalea Avenue
October 22, 2002
6:30 p.m. - 7:30 p.m.

CHARLOTTESVILLE

United Methodist Church
750 Hinton Avenue
October 24, 2002
4:00 p.m. - 5:00 p.m.

HAMPTON

Sammy & Nick's Family Restaurant
2718 West Mercury Boulevard
November 7, 2002
7:00 p.m. - 8:00 p.m.

Written comments may also be submitted to James G. Taylor, VR Program Director, DBVI, 397 Azalea Avenue, Richmond, VA 23227, will be accepted if received prior to November 30, 2002. Comments may also be submitted by e-mailing Mr. Taylor at taylorjg@dbvi.state.va.us or calling 804-371-3140 or toll free 1-800-622-2155.

Purpose of Public Meetings: The purpose of the public meetings is to obtain input from blind and visually impaired consumers, vendors of services, and other interested parties regarding vocational rehabilitation services provided by DBVI. All comments will be considered when the State plan is amended for FY 2003, as required by the Rehabilitation Services Administration. Public input is also considered when developing agency policies and operational procedures for the vocational rehabilitation program.

Comments addressing the following subjects will specifically address State plan requirements:

How might the department utilize community rehabilitation programs (facilities) to provide better services to customers?

What transition services are needed for students with visual disabilities to help them transition from high school to post-secondary training programs and/or work?

What skills should DBVI vocational rehabilitation staff possess in order to provide quality vocational rehabilitation services to customers?

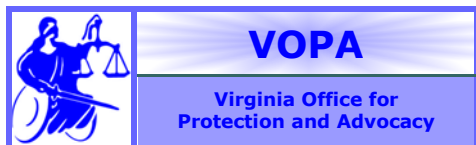
What new initiatives might improve vocational training or employment opportunities for persons who are blind?

Recommendations for improvements to supported employment services.

If sufficient funds are not available to serve all eligible consumers of vocational rehabilitation services the department must implement a priority list or "order of selection." Persons with the most significant disabilities must be served first during an order of selection. How should the department define persons with the most significant disabilities?

How can the agency improve and/or expand services to its customers including minorities and those who are underserved or unserved?

202 N. Ninth St., 9th Floor
Richmond, VA 23219



**Commonwealth of Virginia
Virginia Office for Protection
and Advocacy**

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www.vopa.state.va.us

INSIDE THIS ISSUE

Message from the VOPA Board Chair	1
VOPA Obtains Consent Decree and Permanent Injunction in Death Communication Restored	2
Discharge Planning	3
VOPA Stops Practice of Using Invalid Assessments in Admission Process for City's Therapeutic Recreation Program	3
First Annual Infant and Toddler Connection of Virginia Early Intervention Conference	4
Sign Language Used Here!	5
Letter of Appreciation	6
Virginia Office for Protection and Advocacy FY 2003 Program Priorities	6
Transition Services	11
Commonwealth Convenes Olmstead Plan Task Force	12
VOPA Helps Students Receive Appropriate Assistive Technology Devices	12
Technical Assistance and Short-Term Assistance	13
Department of Rehabilitative Services State Plan Public Hearing Schedule for Fall 2002	15
Virginia Department for the Blind and Vision Impaired Announcement of Public Meetings	16